



City of Westminster

# Licensing Committee

<b>Item No:</b>	
<b>Date:</b>	18 November 2015
<b>Classification:</b>	For General Release
<b>Title of Report:</b>	Licensing Appeals
<b>Report of:</b>	Director of Law
<b>Wards involved:</b>	Not applicable
<b>Policy context:</b>	A business like approach
<b>Financial summary:</b>	None
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## **1. Summary**

1.1 This report provides a summary of recent appeal results.

## **2. Recommendations**

2.1 That the report be noted.

## **3. Background**

3.1 To date, 466 appeals have been heard / settled / withdrawn:

- 16 allowed
- 13 allowed only in part
- 56 dismissed
- 216 withdrawn
- 165 settled

## **4. Licensing Act 2003 Appeals**

### **4.1 8-10 Hill Street, London W1 (x 2 Appeals)**

By application received on 21 October 2014, London Executive Offices Ltd applied for a new premises licence for the lower ground floor to fourth floor, 8-10 Hill Street, London, W1. The application sought the sale by retail of alcohol on Monday to Sunday from 10.00 to 23.00.

Adverse representations were received from

- the Residents Society of Mayfair & St James
- The Mayfair Residents Group
- Freeholder, 12-18 Street Management Ltd
- 6 local residents

The Licensing Sub-Committee considered the application on 11 December 2014. The Sub-Committee were advised that the premises would not act as a private members club and were only rarely likely to use the licence up to 23.00. The use would be mainly for corporate executive events. The numbers attending would generally be in the region of 20/30. Local residents addressed the Sub-Committee as to their fears with regards increased noise. The Sub-Committee granted the application for the lower ground, 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> floors only subject to conditions for Monday to Fridays from 10.00 to 23.00, Saturdays from 10.00 to 20.00 and on Sundays from 12 noon to 19.00. In order to offer additional protection to the local residents they agreed to limit the supply of alcohol in the external garden on relevant days to 21.00.

Two notices of appeal have been received against the Sub-Committee's decision to grant the licence. The first appeal was lodged by local residents, Mr Adrian White and the Honourable Mrs Jessica White. The second appeal was lodged by 12-18 Hill Street Management Company/12-18 Hill Street Freehold. The full hearing of the appeal was scheduled to commence on Monday 12 October 2015. Late on Friday 9 October, the representatives for the Hill Street Management Company advised that they had instructions to agree to a proposed compromise of the appeals. The Appellants and the Applicant company were all happy with the proposed compromise. Due to the agreement being reached so close to the date of the full hearing, the City Council was unable to refer the matter back to the Licensing Sub-Committee to seek authority to settle the appeal. All parties attended Court on Monday 12 October to update the Court of the latest developments. The Court agreed that the best way to deal with the matter was to hear the appeals and to allow them in accordance with the terms agreed between the Appellants and the Licensed Premises. An application for costs of approximately £17k was made by the Whites against the Hill Street

Management Company for attempting to remove a delivery condition imposed on the licence by the Licensing Sub-Committee that was aimed at protecting the Whites. The Court heard submissions from each party as to costs. Judgment was reserved and has since been received ordering the Hill Street Management Company to pay £9,912.40 towards the costs of Mr Adrian White and the Honourable Mrs Jessica White.

#### **4.2 Press, 32-34 Panton Street, London**

By application dated 4 June 2015, the Metropolitan Police Service applied for an Summary Review of the premises licence of Press Nightclub, 32-34 Panton Street, SW1.

The application was made on the grounds of the prevention of crime and disorder, public safety and the prevention of public nuisance. The review followed an incident within and outside of the premises on Sunday 31<sup>st</sup> May 2015 at approximately 02.35am, when a large scale disorder took place inside Press Nightclub. Several people were seriously assaulted and one male was stabbed in the neck. Numerous weapons were used during the incident including bottles, metal poles and tables. The disorder took place throughout the entire premises, with persons chased and attacked in staff areas. The disorder lasted approximately 10 minutes inside the venue before it spilled out onto the streets. 20-30 persons continued to fight outside the premises.

A Licensing Sub-Committee was held on 8 June 2015 to consider whether it was necessary to impose any interim steps pending the hearing of the full Review. Having watched the CCTV and considered the papers before it, as well as hearing representations from the Police and the licence holder, the Licensing Sub-Committee decided that it was necessary to suspend the primary premises licence due to the seriousness of the incident on 31 May 2015.

The full hearing of the Review was held on 29 June 2015. The Licensing Sub-Committee again heard submissions from the Police and Licensee with regards the operation of the premises and the incident on 31 May 2015. Mr Rankin on behalf of the Police advised that the licensee had denied that the stabbing had taken place inside the premises. The victim had suggested it had taken place outside and had not wished to take matters further. Mr Rankin added that the victim was known to the son of the licensee (who was also present at the time of the incident) and it may have been convenient for both parties to claim the stabbing had occurred outside. He added that the police were 99% certain that the stabbing took place within the premises. The Sub-Committee were of the view that there was a wholesale failure to manage the licensed premises and the proposals submitted on behalf of the licensee were not considered to be sufficient in the circumstances. The Sub-Committee therefore considered it was clearly appropriate to revoke the premises licence.

Notice of appeal was lodged by the Appellant's on 17 July 2015. The full hearing of the appeal is scheduled to commence on 12 January 2016 and continue on 13, 14, 15, 19 and 20 January 2016. Evidence and Rebuttal has been exchanged in preparation for the full hearing. The appeal is now being proceeded with on the basis that the decision of the Licensing Sub-Committee was correct, but that a new operator is now proposed who will run the premises in a competent manner.

#### 4.3 Bow Street Hotel, Bow Street Magistrates' Court, 28 Bow Street, London

By application received on 19 December 2014, Bow Street Hotel Ltd applied for a new premises licence for the Bow Street Hotel, 28 Bow Street, London, WC2E 7AH. The application sought:

1. Regulated Entertainment : Indoors, residents bedrooms only  
Films  
Monday to Sunday 00.01 to 00.00
2. Late Night Refreshment : Indoors in the two ground floor restaurants and lower ground floor bar associated with fine dining  
For non residents  
Monday to Sunday 23.00 to 01.30
3. Sale of Alcohol : On the premises in the ground floor and basement bar areas and two ground floor restaurants  
For non residents  
Monday to Sunday 08.00 to 01.00  
For the hotel residents and their bona fide guests
4. Opening Hours  
For the hotel residents and their bona fide guests:  
Monday to Sunday 00.00 to 00.00
5. Non Standard timings and seasonal variation: For non residents  
Late Night Refreshment  
From the start time on New Year's Eve to 05.00 on New Year's Day  
Sale of Alcohol  
From the start time on New Year's Eve to the finish time on New Year's Day

The premises are intended to be operated as a hotel with 100 bedrooms with ground floor restaurant and bar facilities available to the general public and residents. A separate application was also made for the ground floor signature restaurant and basement bar.

Five representations against the application were received. Those representations were from 1) the Environmental Health Service; 2) Dr Vera on behalf of the residents of Martlett Group; 3) Nick Taylor of Martlett Court; 4) Carole Rose, Chairman of Martlett Court Co-operative Ltd; and 5) David Kaner of the Covent Garden Community Association.

The Licensing Sub-Committee considered the application on 19 February 2015. The applicant was represented by Mr Baylis of Berwin Leighton Paisner. Having heard from the applicants representative and from those who objected to the application, the Sub-Committee granted the hours applied for in respect of the residents of the hotel and up to four bona fide guests except the ground floor hotel bar and the basement bar (the Signature Bar) which the Applicants were content should close at 02:00. However, Members granted Core Hours for licensable activities in the majority of the hotel in terms of the non-guests. The aspect of the application relating to films in guests' bedrooms was granted as applied for.

The one exception where Members decided to grant beyond Core Hours was the Signature Restaurant which, as a restaurant, was not contrary to policy and which has an entrance on to Bow Street which is less residential. For the Signature Restaurant the hours granted for non-residents were half an hour beyond Core Hours (midnight Monday to Thursday, 00:30 Friday to Saturday and 23:00 on Sunday).

Notice of appeal was lodged by the applicant on 29 April 2015. The matter was listed for full hearing in the Magistrates' Court on 2 - 6 November 2015. The Appellants advised of the withdrawal of their appeal and agreed to pay the Council's costs in full.

#### 4.4 The Signature Restaurant and Basement Bar, Bow Street Magistrates Court, 28 Bow Street, London

By application received on 19 December 2014, Jason Atherton Restaurant Holdings Ltd applied for a new premises licence for The Signature Restaurant and Basement Bar, Bow Street Magistrates Court, 28 Bow Street, London, WC2E 7AW. The application sought:

1. Late Night Refreshment : Indoors in the Signature Restaurant and Lower Ground Floor Bar  
For non residents  
Monday to Sunday 23.00 to 01.30
2. Sale of Alcohol : On the premises  
For non residents  
Monday to Sunday 08.00 to 01.00  
For the hotel residents and their bona fide guests  
Monday to Sunday 00.00 to 00.00
3. Opening Hours  
For the hotel residents and their bona fide guests:  
Monday to Sunday 00.00 to 00.00
4. Non Standard timings and seasonal variation: For non residents  
Late Night Refreshment  
From the start time on New Year's Eve to 05.00 on New Year's Day  
Sale of Alcohol  
From the start time on New Year's Eve to the finish time on New Year's Day

The premises are intended to be operated as a fine dining restaurant with associated basement bar within a hotel. A separate application was also made for the hotel.

Six representations against the application were received. Those representations were from 1) the Environmental Health Service; 2) Mark Genet; 3) Mrs Sally Johnson; 4) Carole Rose, Chairman of Martlett Court Co-operative Ltd; 5) David Kaner of the Covent Garden Community Association; and 6) Dr Vera, on behalf of the residents of Martlett Group.

The Licensing Sub-Committee considered the application on 19 February 2015. The applicant was represented by Mr Baylis of Berwin Leighton Paisner. Having heard from the applicants representative and from those who objected to the application, the Sub-Committee granted the application on the same terms as had been granted for The Signature Restaurant within the Bow Street Hotel licence (no restrictions to hotel residents but half an hour beyond Core Hours for non-residents). The licence in respect of the Basement Bar was also on the same terms as had been granted within the Bow Street Hotel licence; it would be closed to non-residents outside Core Hours and to residents and up to four bona fide guests at 02:00.

The Members decided to grant half an hour beyond Core Hours for the Signature Restaurant on the basis that as a restaurant it would not be contrary to policy and it would have its own entrance on to Bow Street which is less residential.

Notice of appeal was lodged by the applicant on 29 April 2015. The matter was listed for full hearing in the Magistrates' Court on 2 - 6 November 2015. The Appellants advised of the withdrawal of their appeal and agreed to pay the Council's costs in full.

## **5. Gambling Act 2005**

### **5.1 Betfred, 351 Harrow Road, London, W9 3RA**

On 26<sup>th</sup> March 2015 an application was received for a new betting shop at 351 Harrow Road, London, W9 3RA. The application was made under Section 159 of the Gambling Act 2005 (2005 Act).

The premises were previously licensed under the Licensing Act 2003 as the Prince of Wales Public House. However, the licence was revoked by the Licensing Sub-Committee on 6 November 2014 following crime and disorder within the premises. The premises is therefore currently unlicensed.

The application received a representation from the Police on 15 April 2015 stating that it was their belief that the application if granted would undermine the Gambling Act 2005 licensing objectives. Further documents including 2 statements of crime reports were submitted by the Police in support of their objection.

A representation was received on 21 April 2015 from the Licensing Authority stating that insufficient information had been provided to show how the premises would promote the licensing objectives.

A further 68 representations against the grant of the licence were received from local residents, 1 from a local business owner and 4 from Councillors.

The application was considered by the Licensing Sub-Committee on 1 July 2015. A copy of the report that was considered by the Sub-Committee is at Enclosure 1. The Sub-Committee refused the application. The Sub-Committee concluded that the granting of the application at such a highly sensitive location would be likely to result in an increase in crime and disorder that is associated with betting but was particularly concerned that it would also increase the risk that vulnerable people in the area would be harmed or exploited by gambling.

Notice of appeal against the decision of the Licensing Sub-Committee was filed at the Magistrates Court on 7 August 2015. The full hearing of the appeal was listed for a nine day hearing from 4-14 April 2016. Following the refusal of Planning Permission for 351 Harrow Road, the Appellants approached the City Council with a view to withdrawing their appeal. It was agreed that the Appellants would pay £6,000 in costs to the City Council.

## **6. City of Westminster Act 1999**

### **6.1 Pitch 545 and 546 Church Street Market**

Mr Zougalghena has appealed against the decision of the Licensing Officer Panel on 30 September 2015 to revoke his street trading licences for Pitch 545 and 546 Church Street Market. The referral to the Licensing Officer Panel and the subsequent revocation of his street trading licences followed counterfeit goods found on display and for sale from the Pitches bearing a mark identical or likely to be mistaken for a registered name, mark or logo. Issues were also raised regarding items that were not on the commodities list of the licence that were being sold from the Pitches.

Notice of appeal was lodged against the revocation. A date for the full hearing of the appeal has not yet been scheduled.

## **7. JUDICIAL REVIEWS / CASE STATED**

### **7.1 Sex Establishment Licensing - Fees**

The challenge took the form of a judicial review brought by Mr Timothy Hemming, trading as Simply Pleasure Ltd, and six other long standing licensees of sex establishments in Westminster, challenging the legality of the fee charged by the City Council for a sex establishment licence in 2011/12 (£29,102). The claim was made on two grounds. Firstly it was said that the Council had never lawfully set a fee for 2011/12. Secondly it was said that the amount of the fee was unlawful because it contained an element reflecting the cost of enforcing the sex establishment licensing regime.

The case was heard in the High Court over two days in March, both sides being represented by Leading Counsel. The Court gave judgment on 16 May, upholding the claim on both grounds.

An application for permission to appeal on the Services Directive issue, and costs, was filed with the Court of Appeal, following refusal of permission by the High Court. The Court of Appeal granted permission to appeal and the matter was heard on 14 January 2013.

Following the hearing, the parties were invited by the Court to make further written submissions on several issues, including whether it would be appropriate for the Court to refer the case to the European Court of Justice. Both parties made further written submissions

The Court handed down judgment on 24 May. The City Council's appeal on both the Services Directive issue and on costs was dismissed. An appeal on a third point, relating to the way in which fees for past years should be calculated, was allowed. The Council was ordered to pay 90% of the claimants costs of the appeal, and the claimants were ordered to pay 10% of the Council's costs. The Council's application for permission to appeal to the Supreme Court was refused.

An application was lodged to the Supreme Court itself for permission to appeal. Submissions in support of the Council's application for permission to appeal were filed by the Architects Registration Board, the Bar Standards Board, the Solicitors Regulation Authority, the Law Society, the Farriers Registration Council, the Care Quality Commission and the General Council of the Bar. An Order was received from the Supreme Court granting permission to Appeal. Applications to intervene were submitted on behalf of the Bar Council, the Law Society, the Architects Registration Board, the Solicitors Regulation Authority, the Bar Standards Board, the Care Quality Commission and the Farriers Registration Council. A conference with Counsel was held to discuss procedural issues and how best to deal with intervenors. The LGA had been invited, and attended, the conference part way through to discuss the possible role of the LGA. It was agreed that WCC would instruct a Licensing Counsel to assist those already instructed to deal with any licensing issues and research regimes that may be impacted.

The LGA subsequently advised us that they have been advised by Counsel to apply to intervene by making written submissions.

A date for the hearing in the Supreme Court was set for 13 January 2015.

The case was heard in Supreme Court on 13 January 2015 before Lord Justices Neuberger, Clarke, Toulson, Reed and Mance. The parties are the City Council as appellant, Mr Hemming and the other sex shop proprietors as respondent, and the intervenors. Seven regulatory bodies and the Local Government Association were

given permission to intervene and were represented. There was also a ninth intervener at the hearing, the Treasury.

The hearing itself took place over one day. After the hearing, the Court wrote to all parties inviting further submissions on matters which, they considered, may not have been dealt with fully at the hearing because of shortness of time. These issues revolved around whether it is open to a licensing authority to charge, at application stage, a fee which is returnable if the application is unsuccessful, or whether such a fee may only be charged later, when the application is granted or at a later stage than that.

Judgment was delivered on 29 April, and, subject to one point which the Court has referred to the European Court of Justice, the City Council was successful.

The City Council submitted representations in writing on the referred questions to the ECJ on 28 September 2015. The interveners are due to submit their representations in writing by the end of November. It is understood that representations have also been made by the Netherlands and the Commission. Copies of those submissions will be circulated when all submissions have been received and translated.

## **8. Legal implications**

8.1 There are no legal implications for the City Council arising directly from this report.

## **9. Staffing implications**

9.1 There are no staffing implications for the City Council arising directly from this report.

## **10. Business plan implications**

10.1 There are no business plan implications arising from this report.

## **11. Ward member comments**

11.1. As this report covers all wards, comments were not sought.

## **12. Reason for decision**

12.1 The report is for noting.

If you have any queries about this report or wish to inspect any of the background papers please contact Hayley Davies on 020 7641 5984; email: [hdavies@westminster.gov.uk](mailto:hdavies@westminster.gov.uk)

### **Background Papers**

- None